

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In Re:

FIRED UP, INC.<sup>1</sup>  
Debtor

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Case No. 14-10447-tmd  
(Chapter 11)

**APPLICATION FOR APPROVAL OF EMPLOYMENT OF UNIQUE STRATEGIES  
GROUP, INC. AS DEBTOR'S FINANCIAL ADVISOR EFFECTIVE MAY 24, 2014**

A hearing will be conducted on this matter on July 3, 2014 at 1:30 pm in courtroom no. 1, 903 San Jacinto, Austin, TX 78701.

If you object to the relief requested, you must respond in writing, specifically answering each paragraph of this pleading. Unless otherwise directed by the court, you must file your response with the clerk of the bankruptcy court within 21 days from the date you were served with this pleading. You must serve a copy of your response on the person who sent you the notice; otherwise, the court may treat the pleading as unopposed and grant the relief requested.

TO THE HONORABLE JUDGE OF SAID COURT:

Fired Up, Inc. (the "Debtor") hereby files this *Application for Approval of Employment of Unique Strategies Group, Inc. as Debtor's Financial Advisor for the Debtor Effective May 24, 2014* ("Application") and in support thereof states as follows:

**Jurisdiction, Venue and Procedural Background**

1. On March 27, 2014 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of Texas, Austin Division ("Court"), thereby commencing this chapter 11 case ("Case").

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<sup>1</sup> Until February 26, 2014, Debtor's business was being operated partially by the Debtor, partially by Kona Restaurant Group, Inc. ("KRG"), a Delaware corporation wholly owned by the Debtor, and partially by Carino's Italian Kitchen, Inc. ("CIK"), a Delaware corporation wholly owned by KRG. CIK was merged into KRG in Delaware and KRG was merged in to the Debtor, a Texas corporation, in Texas.

2. The Debtor continues in possession of its property and it is operating and managing its business as a debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

3. No trustee or examiner has been appointed in the Debtor's Chapter 11 Case. A creditors' committee has been appointed pursuant to 11 U.S.C. § 1102.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The Application itself is grounded, *inter alia*, in 11 U.S.C. §§ 327 and 330, Fed. R. Bankr. P. 2014, and Rule 2014 of the Local Rules for the United States Bankruptcy Court for the Western District of Texas ("Local Rules").

#### **Relief Requested**

7. By this Application, Debtor respectfully requests that the Court enter an order, pursuant to 11 U.S.C. § 327 and the applicable Federal Rules of Bankruptcy Procedure and Local Rules, authorizing the Debtor to employ and retain Unique Strategies Group, Inc. ("USG" or "Firm") as its financial advisor in this Case. Debtor seeks to retain USG of May 24, 2014, when the Debtor determined that it required the retention of a financial advisor based on the events taking place in the case and comments during status conferences from the Court.

#### **Basis for Relief**

8. Section 327(a) of the Bankruptcy Code authorizes a trustee with the Court's approval to employ

One or more attorneys, accountant, appraisers, auctioneers, or other professional persons . . . to represent or assist the trustee in carrying out the trustee's duties under this title.

*See* 11 U.S.C. § 327(a).

9. Debtor seeks to retain USG as its financial advisor pursuant to 11 U.S.C. § 327(a). Debtor believes that USG possesses the requisite resources and is both highly qualified and uniquely able to represent Debtor in this case. Among other accomplishments, USG has served as financial advisor for the Unsecured Creditors Committee in the Crescent Resources bankruptcy in this District, which at the time was the largest chapter 11 case filed in the United States involving real estate, and Dan Bensimon, one of its principals, continues to serve as the Trustee for the Crescent Resources Litigation Trust; his work led not only to a confirmed Plan but a substantial distribution to unsecured creditors. Highlights of Bensimon's Professional Experience are attached hereto and made a part hereof as Exhibit "A."

10. The professional services to be rendered and the proposed arrangement for compensation are set forth in the Engagement Letter attached hereto as Exhibit "B." The Firm's fees and expenses are to be paid by the bankruptcy estate. To the extent allowed by the Court with respect to other financial advisors or professionals employed in this case, expenses shall include any reasonable legal fees incurred by USG related to its retention and defense of its fee applications, and its retention agreement will provide for indemnification by the Debtor.

11. The proposed arrangement of compensation is as follows: such applicant financial advisor will apply to the Court for compensation pursuant to Fed. R. Bankr. P. 2016, applicable case law, and the Fee Procedures the Court has indicated it will be entering in this case.

12. The hourly rates to be charged by Bensimon and one associate who will be working under his supervision are as follows:

Dan Bensimon	\$250.00
Beth Whatley	\$200.00



The above-outlined hourly rates are subject to periodic review (generally annually) to reflect changes in the economy, experience, and other factors and may be raised in the future, subject to approval of the Court as being reasonable under the procedures set out in Paragraph 11, *supra*.

13. Other professionals in the same profession who are seeking to be hired in this case are:

FTI Consulting, Inc. by the Unsecured Creditors Committee

14. To the best of Debtor's knowledge, other than in connection with this chapter 11 case, USG has no connection with Debtor, its creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as set forth herein and/or in the Verified Statement of Dan Bensimon ("Bensimon Statement"), filed pursuant to Federal Rule of Bankruptcy Procedure 2014(a).

15. Based on the Bensimon Statement and Debtor's knowledge of its business, litigation and relations with creditors and other parties in interest, Bensimon does not represent or hold any interest adverse to Debtor, its estate, creditors, equity security holders, or affiliates in the matters upon which USG is to be engaged, and USG is a "disinterested person" within the meaning of 11 U.S.C. § 101(14). To the best of Debtor's knowledge, USG's employment would be in the best interest of the estate.

#### **Notice**

16. This Application is being served pursuant to Local Rule 9013(d) and, more specifically, on the Seventh Master Limited Service List. In light of the relief requested herein, Applicant submits that no further notice should or need be provided.

WHEREFORE, Debtor **Fired Up, Inc.**, respectfully requests entry of an Order authorizing Debtor to employ USG as financial advisor effective May 24, 2014, and granting such other and further relief as this Court may deem just.

DATED: June 2, 2014.

Respectfully submitted,

FIRED UP, INC.

By:

  
Creed Ford III

**BARRON & NEWBURGER, P.C.**

1212 Guadalupe, Suite 104

Austin, Texas 78701

(512) 476-9103 Ext. 220

(512) 476-9253 Facsimile

By: /s/ Barbara M. Barron

Barbara M. Barron

State Bar No. 01817300

Stephen W. Sather

State Bar No. 17657520

**PROPOSED ATTORNEYS FOR DEBTOR**

**CERTIFICATE OF SERVICE**

I certify that the foregoing was served by electronic mail on June 2, 2014, to all parties listed on the Seventh Master Limited Service List attached hereto and made a part hereof and electronically by the Court's ECF system to all parties registered to receive such service.

/s/ Barbara M. Barron

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In Re:

FIRED UP, INC.  
Debtor

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Case No. 14-10447-tmd  
(Chapter 11)

**UNSWORN DECLARATION UNDER PENALTY OF PERJURY**  
**BY DAN BENSIMON, PROPOSED FINANCIAL ADVISOR**

The undersigned does hereby certify under penalty of perjury pursuant to Rule 2016(b) of the Bankruptcy Rules of Procedure:

1. I am the Chief Executive Officer of Unique Strategies Group, Inc.
2. The firm of Unique Strategies Group, Inc. ("Firm") maintains an office at 5810 Tom Wooten Drive, Austin, Texas.

3 That the compensation paid or promised to USG for services to be rendered in connection with the case are as follows: Fees will be billed at the following rates:

Dan Bensimon	\$250.00/hour.
Beth Whatley	\$200.00/hour.

4 The firm has received no payment for any work performed, nor has it received a retainer for work it is expected to do.

5 The source of future compensation is as follows: all fees will be paid from the estate pursuant to court approval.

5. That affiant has not shared nor agreed to share such compensation with anyone except shareholders and associates of his firm.

EXECUTED ON THIS THE 2<sup>nd</sup> day of June, 2014.

By:

  
DAN BENSIMON

APPROVED:

Fired Up, Inc.

By:

  
Creed Ford III



**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**In Re:**

**FIRED UP, INC.  
Debtor**

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**Case No. 14-10447=tmd  
(Chapter 11)**

**AFFIDAVIT OF PROPOSED FINANCIAL ADVISOR**

**STATE OF TEXAS**

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§  
§

**COUNTY OF TRAVIS**

BEFORE ME, the undersigned authority, on this day personally appeared Dan Bensimon, who after first being duly sworn, upon his oath, deposed and stated as follows:

1. I am the Chief Executive Officer of Unique Strategies Group, Inc.
2. The firm of Unique Strategies Group, Inc. ("Firm") maintains an office at 5810 Tom Wooten Drive, Austin, Texas, 78731 and can be contacted by telephone at 512-529-7600.
3. The Firm has been engaged, subject to Court approval, to act as a financial advisor to Fired Up, Inc., the Debtor in this case.
3. I independently reviewed: (a) the list of Creditors filed by the Debtor in this case; (b) the list of creditors and parties-in-interest on the Seventh Limited Master Service List; and (c) the List of Equity Security Holders filed with the Court.
4. The Firm has no connection with the above-named Debtors, their creditors, members of the Unsecured Creditors Committee, any other party in interest herein, their respective attorneys and accountants, the United States Trustee or any person employed therein, except as set forth in Paragraph 5, *infra*.
5. I am aware of the following connections which should be disclosed pursuant to Fed.R.Bankr.Pro. 2014:
  - a **Debtor:** I have reviewed the creditors and equity holders of the Debtor filed with this Case and talked to the Debtor about its officers and directors. I am aware of no connection with any of the individuals.
  - b **Creditors:** Aetna, AT&T, Qwest and Travelers and various taxing authorities have all been beneficiaries of Liquidating or Litigation Trusts that I have been trustee on. None of them have been board members of any of the trusts that I have been

trustee for or advisor to. I am not aware of any other connection that I have with any creditors of the estate.

c. **Other:** I am the Trustee for the Crescent Resources Litigation Trust. My attorneys in connection with litigation filed by the Trust, retained FTI Consulting, Inc. in the late summer or early fall of 2010; they stopped working on the case in February of 2013.

d. **U.S. Trustee:** I am not aware of any connections with the U.S. Trustee other than that in the ordinary course of business when I have been employed in other cases.

e. **Attorneys:** I have worked with Debtor's counsel ("BNPC") on several other cases over the years but am not engaged in work for any of its clients at this time. I have had several business dealings with Barbara Barron of BNPC although have none at this time. I consider her a friend. I have reviewed the list of attorneys who have made appearances in this case. I have been represented by Joseph Martinec in the Crescent Resources and other cases.

4. Based upon the foregoing, I believe that the Firm is a disinterested person within the meaning of Sections 101(14) and 327 of the Bankruptcy Code.

5. I declare the above and foregoing to be true and correct under penalty of perjury.



Dan Bensimon



EXHIBIT "A"

**Dan Bensimon**

*5810 Tom Wooten Drive*

*Austin, Texas 78731*

**Highlights of Professional Experience:**

Unique Strategies Group, Inc. (1988 – Present) Principal

A financial consulting company specializing in: reorganization of corporate structures; in-depth analyses of corporate business plans and financial viability; bankruptcy/litigation strategic and analytical support; restructure of real estate and real estate related companies.

Crescent Resources Litigation Trust (2010- Present) Trustee

Through litigation and settlements, the Trust was able to recover enough funds to far exceed the projected return to approved unsecured creditors..

Crescent Resources, LLC and Subsidiaries, Crescent Resources Unsecured

Creditors Committee (2009 –2010) Financial Advisor and Analyst

Crescent Resources was the largest privately held real estate entity to ever file for bankruptcy.

Owner/Operator (1989-Present)

Own and operate several real estate entities for the purpose of developing residential lots and building single family homes and income producing properties.

Financial Adviser (1986- Present)

Engaged as a consultant to advise on financial affairs, corporate structures, economic functionality of general operations, and strategic modifications to business plans for many entities in Chapter 11 bankruptcies.

Big Red Sun, Inc. (2008) Receiver

Negotiated a separation of assets and operations between owners to the benefit of all. Creditors were paid 93% upon proper disposition of the corresponding real estate.

Nash Phillips Copus, Inc. (1986-1988) President (while in Chapter 11).

The largest privately held homebuilder in the country at the time. Assets of the combined entities totaled over \$500 million consisting of over 60 different projects.

Milton Development Corporation (1985-1986) Vice President.

Reorganized the company's financial operation.

Touche Ross & Co. (1968-1985) Accountant/ Partner

Started as an accountant in Auditing. Career was interrupted for three years after serving in Special Forces in the Army in 1968. Became a partner in 1979.

Worked in the Los Angeles, Washington, D.C., New York, Paris and Austin offices. In charge of European audit operations 1979-1982.

Military Service (1968-1971) Army Special Forces after graduating Officers Candidate School.

Education (1964-1968) University of Maryland Bachelor of Science degree in Accounting and Economics.

**Unique Strategies Group, Inc.**  
**5810 Tom Wooten Drive**  
**Austin, Texas 78731**  
*Phone (512) 529-7600*  
*Fax (512) 795-8431*  
*Email: [dbensimon@austin.rr.com](mailto:dbensimon@austin.rr.com)*

June 1, 2014

Barbara Barron  
Stephen W. Sather  
BARRON & NEWBURGER, P.C.  
1212 Guadalupe, Suite 104  
Austin, Texas 78701

Dear Barbara:

We are pleased that Fired Up, Inc. is considering engaging Unique Strategies Group, Inc, to act as its advisor to explore strategic alternatives for the Debtor in its reorganization process.

We look forward to working with you on this endeavor and have set forth the agreed upon terms of our engagement. As part of our engagement, we will:

- a) Assist you in identifying strategic alternatives and the most cost effective options for the Debtor and Creditors to maximize their eventual financial benefit;
- b) Assist you in preparing descriptive and analytical tools including potential projections regarding strategic alternatives;
- c) Assist you in the preparation and implementation of a plan that efficiently describes the impact to the unsecured creditors of major transactions by the debtor;
- d) Assist you in identifying the viable assets that will generate current and future income for the estate;
- e) Be available at your request to meet with the Committees and its Financial Advisor to discuss the strategic alternatives including financial solutions.

We will perform our services on a time and materials basis. We will submit our invoices monthly, to be approved by the bankruptcy court pursuant to the provisions of the Bankruptcy Code and the orders of the court relating to compensation of professionals.

Our billing rates are as follows:



Dan Bensimon \$250 an hour  
Beth Whatley \$200 an hour

We represent and warrant that each of our employees and other representatives performing services hereunder have and will maintain throughout the term of this engagement any licenses and permits necessary to perform the services. We will comply with all applicable laws in performing our services.

We will require the same indemnification provision as approved by the Court for other retained financial advisors in this bankruptcy.

We look forward to working with you. If you have any questions, please feel free to contact me @ 512-529-7600 or Beth Whatley at her direct line of 512-963-9633.

Sincerely,



Dan Bensimon

**United States Trustee:**

Henry G. Hobbs  
Deborah A. Bynum  
Office of the U.S. Trustee  
903 San Jacinto Blvd., Room 230  
Austin, TX 78701  
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[deborah.a.bynum@usdoj.gov](mailto:deborah.a.bynum@usdoj.gov)

**20 Largest Unsecured Creditors:**

AEI Accredited Investor Fund 2002  
Attn: Brian Schulz  
1300 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
[bschulz@aeifunds.com](mailto:bschulz@aeifunds.com)

Internal Revenue Service  
Special Procedures Staff- Insolvency  
P.O. Box 7346  
Philadelphia, PA 19101-7346

**Debtor:**

Creed Ford, III  
President/CEO  
Ford Restaurant Group  
1514 RR 620 South  
Austin, TX 78734  
[cford@carinos.com](mailto:cford@carinos.com)

AEI Fund Management, Inc.  
Attn: Brian Schulz  
1300 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
[bschulz@aeifunds.com](mailto:bschulz@aeifunds.com)

Magdalena Properties, LLC  
c/o R. Spencer Shytles  
Graham Bright & Smith, P.C.  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
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Margaret B. Smith, CPA  
Director of Finance  
Ford Restaurant Group  
1514 RR 620 South  
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[msmith@fordrestgrp.com](mailto:msmith@fordrestgrp.com)

ARC CAFÉ, LLC  
American Realty Capital  
Attn: Cindy Dip  
200 Dryden Road, Suite 1100  
Dresher, PA 19025  
[cdip@arlcapi.com](mailto:cdip@arlcapi.com)

Pleasant Ridge Development Co.  
Attn: Lou Schickel  
11601 Pleasant Ridge Rd., Suite 300  
Little Rock, AR 72212  
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**Proposed Attorneys for Debtor:**

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Stephen W. Sather  
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Mary Raney & Dick P. Wood, Jr., as  
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Texas Comptroller of Public Accts.  
c/o Jason A. Starks  
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Bankruptcy & Collections Division  
P.O. Box 12548  
Austin, TX 78711-2548  
[jason.starks@texasattorneygeneral.gov](mailto:jason.starks@texasattorneygeneral.gov)

Gentilis, Inc.  
Attn: Moja Lindsey  
3400 Reeves Canyon Road  
Redwood Valley, CA 95470  
[moja2@thelindseycompanies.com](mailto:moja2@thelindseycompanies.com)

Texas Workforce Commission  
Attn: Regulatory Integrity Div-SAU  
101 E. 15th Street, Room 556  
Austin, TX 78778-0001  
[rid.taxbankruptcy@twc.state.tx.us](mailto:rid.taxbankruptcy@twc.state.tx.us)

**Secured Creditors:**

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c/o Blake Rasner  
Haley & Olson, P.C.  
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The Coca-Cola Company  
William Kay, Sr. Bankruptcy Advisor  
P.O. Box 1734  
NAT 2008 Mail Stop  
Atlanta, GA 30313  
[billkaye@jllconsultants.com](mailto:billkaye@jllconsultants.com)

Wells Fargo Bank, N.A.  
c/o James G. Ruiz  
Winstead, P.C.  
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Austin, TX 78701  
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Prosperity Bank  
c/o Lisa C. Fancher  
Fritz, Byrne, Head & Harrison, PLLC  
98 San Jacinto Blvd., Suite 2000  
Austin, TX 78701-4286  
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Wilmington Center, LLC  
Attn: Fay Farzani  
9471 Lomitas Avenue  
Beverly Hills, CA 90210  
[fafar101@aol.com](mailto:fafar101@aol.com)

**Additional Notice:**

Bruce M. Wilpon  
Special Assistant U.S. Attorney  
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[bruce.m.wilpon@irs.counsel.treas.gov](mailto:bruce.m.wilpon@irs.counsel.treas.gov)

**Unsecured Creditors Committee:**

AEI Income & Growth Fund 24, LLC  
Robert P. Johnson  
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[bschulz@acifunds.com](mailto:bschulz@acifunds.com)

**Proposed Counsel for Creditors' Committee:**

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Ben E. Keith Company (interim chair)  
Richard Grasso  
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**Miscellaneous:**

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Independent Bank  
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**Notices of Appearance:**

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